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Sent: 5/12/2017 1:19:22 PM
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Subject: RE: Law360 Article on ME WQS Stay

And here's the article on the Tribes' opposition:

Maine Tribes Slam EPA's Bid To Stay Water Quality Suit

Share us on: By [Kat Sieniuc](#)

Law360, New York (May 11, 2017, 3:53 PM EDT) -- Two tribes in Maine urged a federal judge to reject the [U.S. Environmental Protection Agency's](#) bid for a 90-day stay in the state's suit challenging the EPA's tightening of its water quality standards for tribal waters so it can review the policy, saying pausing the case will harm the tribes for no reason.

The [Houlton Band](#) of Maliseet Indians and the Penobscot Nation in their opposition brief to the agency's bid said Wednesday the EPA hasn't even satisfied the standard for a stay: Not only did the "unusually generous" briefing schedule intentionally build in time for new political appointees to familiarize themselves with the case, but the agency hasn't been presented with new circumstances or scientific evidence that could support a permissible reconsideration of prior decisions, the tribes said.

"Given the already generous briefing schedule and the complete lack of new evidence or argument presented by the reconsideration petitions, a stay would only serve to delay the implementation of long-awaited water quality standards intended to protect both the health and culture of tribal sustenance fishers, which have been severely imperiled by pollution of the Meduxnekeag and Penobscot rivers," the motion said.

Maine's Department of Environmental Protection wants to impose water quality standards that are lower than what the EPA, under the former administration, has said would protect the Houlton Band of Maliseet Indians' sustenance fishing practices — and petitioned the EPA to reconsider the rule.

But the tribes say Maine's petition does "nothing to upset the strong analysis and administrative record that EPA amassed over the last several years, both in the decisions at issue in this case and in the federal [water quality standard] rulemaking" and presents "no warrant for administrative reconsideration or for a stay in this litigation."

The EPA [last week](#) asked a Maine federal judge for a 90-day stay in the state's suit challenging the EPA's tightening of its water quality standards for tribal waters, so it can review the policy. The agency said in its motion that it plans to use the three-month pause to brush up on the more stringent standards being challenged by the state — which were put in place by former President Barack Obama's EPA — to determine whether the agency should reconsider or withdraw the rules altogether, which could signal a shift in how strictly the EPA plans to regulate water quality in the country.

"Depending upon how EPA determines to respond to the administrative petitions for reconsideration, that determination could substantially affect these proceedings," the motion said. "For example, if EPA determines that it should reconsider the challenged decisions, in whole or in part, in light of the administrative petitions, EPA's subsequent decision on reconsideration could moot this case entirely."

But any further delay in the case, the tribes' opposition brief says, will prejudice both the Houlton Band and the Penobscot Nation, which are fishing tribes.

"Since time immemorial, sustenance fishing has been at the heart of their cultures," the tribes said. "When Congress set aside trust lands along the Meduxnekeag River and the Penobscot River as homelands for the Tribes, it did so specifically to allow tribal members to continue their traditional way of life."

That way of life is threatened by pollution, the tribes said, which is also endangering the health of tribal members who continue to engage in traditional levels of sustenance fishing.

"While the Clean Water Act is intended to guard against such threats, until [the] EPA promulgated the federal [water quality standards], no [standards] protected Indian waters in Maine," the tribes said, adding that "even with the federal [water quality standards] now in effect, neither Maine nor [the] EPA have made any efforts to implement them thus far, and it is unlikely that either will voluntarily do so until this case is resolved."

"Accordingly, extending the briefing deadlines by 90 days or beyond would endanger tribal members' health and culture for that much longer," the tribes said.

Maine's suit, first filed in 2014, seeks a declaration that its environmental jurisdiction applies uniformly throughout the state, including in Native American territories, based on settlement acts from the 1980s that established a unique tribal-state relationship.

In December, the Houlton Band of Maliseet Indians asked a Maine federal court to let it intervene to oppose the state's suit challenging the stricter water quality standards for tribal waters, saying that the more restrictive rules ensure the tribe can continue its fishing traditions.

The tribe, whose members live along the Meduxnekeag River in Maine, objects to the state Department of Environmental Protection's efforts to impose water quality standards lower than the EPA believes would protect the tribe's sustenance fishing practices. The band said it has a compelling interest more pressing than the federal government's own claims of authority.

The EPA did not immediately return a request for comment Thursday.

The Houlton Band is represented by Graydon G. Stevens of [Kelly Remmel & Zimmerman](#) and Cory J. Albright, Jane G. Steadman and Riyaz A. Kanji of [Kanji & Katzen PLLC](#).

Maine is represented by Scott W. Boak of its attorney general's office.

The EPA is represented by David A. Carson and John G. Osborn of the [U.S. Department of Justice](#).

The case is Maine et al. v. Pruitt et al., case number [1:14-cv-00264](#), in the U.S. District Court for the District of Maine.

--Additional reporting by Michael Phillis. Editing by Orlando Lorenzo.

From: Knapp, Michael

Sent: Tuesday, May 09, 2017 8:37 AM

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Subject: Law360 Article on ME WQS Stay

EPA Asks For Stay In Maine Water Quality Row

Share us on: By [Kat Sieniuc](#)

Law360, New York (May 8, 2017, 5:16 PM EDT) -- The [U.S. Environmental Protection Agency](#) on Friday asked a Maine federal judge for a 90-day stay in the state's suit challenging the EPA's tightening of its water quality standards for tribal waters, so it can review the policy.

The agency said in its motion that it plans to use the three-month pause to brush up on the more stringent standards being challenged by the state — which were put in place by former President Barack Obama's EPA — to determine whether the agency should reconsider or withdraw the rules altogether, which could signal a shift in how strictly the EPA plans to regulate water quality in the country.

"Depending upon how EPA determines to respond to the administrative petitions for reconsideration, that determination could substantially affect these proceedings," the motion said. "For example, if EPA determines that it should reconsider the challenged decisions, in whole or in part, in light of the administrative petitions, EPA's subsequent decision on reconsideration could moot this case entirely."

On the flip side, the agency said, litigation can resume if the EPA decides after its review not to reconsider the challenged standards.

Maine's Department of Environmental Protection wants to impose water quality standards that are lower than what the EPA, under the former administration, has said would protect the Houlton band of Maliseet Indians' sustenance fishing practices.

Maine's suit, first filed in 2014, seeks a declaration that its environmental jurisdiction applies uniformly throughout the state, including in Native American territories, based on settlement acts from the 1980s that established a unique tribal-state relationship.

Now, the EPA says that the recent change in administrations means it needs time to determine how to proceed, stressing "new personnel, including a new administrator, who need to familiarize themselves with the complex factual and legal underpinnings of the decisions that are challenged here."

In December, the Houlton band of Maliseet Indians asked a Maine federal court to let it intervene to oppose the state's suit challenging the stricter water quality standards for tribal waters, saying that the more restrictive rules ensure the tribe can continue its fishing traditions.

The tribe, whose members live along the Meduxnekeag River in Maine, objects to the state Department of Environmental Protection's efforts to impose water quality standards lower than the EPA believes would protect the tribe's sustenance fishing practices. The band said it has a compelling interest more pressing than the federal government's own claims of authority.

"The Houlton band has a direct and substantial interest in ensuring that its members can safely engage in the sustenance fishing practices that have been integral to the Maliseet way of life since time immemorial," they said in their December motion to intervene. "The case cuts straight to the heart of the Houlton band's culture and economy."

Representatives for the tribe and the state were not immediately available to comment on Monday.

The Houlton band is represented by Graydon G. Stevens of Kelly Remmel & Zimmerman, and Cory J. Albright, Jane G. Steadman and Riyaz A. Kanji of Kanji & Katzen PLLC.

Maine is represented by Scott W. Boak of its attorney general's office.

The EPA is represented by David A. Carson and John G. Osborn of the U.S. Department of Justice.

The case is Maine et al. v. McCarthy et al., case number 1:14-cv-00264, in the U.S. District Court for the District of Maine.

--Additional reporting by Michael Phillis. Editing by Stephen Berg.

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